



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JULY 2, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-23014](#)-A-13 **IN RE: DANIEL/VICKI JACOBS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
5-10-2024 [\[79\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
WITHDRAWN BY THE MOVANT

Final Ruling

The hearing on this matter was continued to allow the parties to meet and confer. The parties have stipulated that the motion may be withdrawn by the trustee, ECF No. 94. Fed. R. Civ. P. 41. Accordingly, the court will allow the trustee to withdraw his motion and removes this matter from the calendar. No appearances are required.

2. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
5-6-2024 [\[178\]](#)

TRACY WOOD/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from June 4, 2024

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Failure to File Amended Plan

Best Interests of Creditors/Estate: Dismiss

Petition Filed: May 28, 2023

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtors failed to file an amended plan. In response to the motion the debtors filed an amended plan and motion to confirm the plan.

The hearing on this motion was continued to coincide with the debtors' motion to confirm (TLW-12). The court has denied the motion. The debtors have filed 7 motions to confirm a Chapter 13 Plan, each of which has been denied.

On June 18, 2024, the Chapter 13 trustee filed a Status Report requesting that his motion be dismissed. Status Report, ECF No. 192. The court denies the trustee's request to dismiss his motion.

This case has been pending since May 28, 2024, over one year ago, and a Chapter 13 plan is not yet confirmed. The most recently filed plan, which is titled the Fourth Amended Chapter 13 Plan, is the **tenth plan** filed by the debtors during the pendency of this case.

The court will grant the motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

3. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-12](#)

MOTION TO CONFIRM PLAN
5-7-2024 [\[182\]](#)

TRACY WOOD/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

CONFIRMATION

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The Chapter 13 trustee opposes the motion contending that the plan provisions are unclear regarding the treatment of secured creditor NewRez, LLC. New Rez, LLC has filed a claim listing pre-petition mortgage arrears in the amount of \$8,139.74. The creditor holds a note secured by a deed of trust in the debtors' residence. Claim No. 20. The plan lists the claim of NewRez, LLC in Class 4. Fourth Amended Chapter 13 Plan, § 3.10, ECF No. 184. Additionally, the non-standard provisions of the plan provide:

7.01 Modifying Section 2.01, This monthly plan payment is a stepped plan, with the first 4 months having been paid at \$50 per month, several months have been paid at \$839 per month, and now the plan payment will be increased to \$984 per month to pay arrears per proof of claim 20 filed by NewRez for \$ 8,139.74, and to cover and arrears of \$887.75 on the Toyota Prius, also paid through the plan.

Id., § 7.01 Non-Standard Provisions.

For the following reasons the motion will be denied.

MOTION IS NOT SUPPORTED BY EVIDENCE

Admissible Evidence is Required

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c) (4) .

LBR 9014-1(d) (3) (D) .

The motion will be denied as it is not supported by any evidence. There is no declaration of either debtor in support of the motion.

Moreover, the most recently filed Schedule I in this case was filed on October 5, 2023, over 9 months ago. Current budget schedules are an essential part of the court's review of the feasibility of the debtors' plan. The current schedules are part of the debtors' prima facie case in plan confirmation and must be filed at the inception of the motion. The debtors have failed to update the schedules.

MORTGAGE PAYMENTS

11 U. S. C. § 1325(a) (5) (B) (ii): Improper Classification of Secured Claim

The residential home mortgage payments were delinquent on the date of the petition; thus, classification of that claim in Class 4 (direct payment) is improper. **The court will not confirm a plan which fails to provide for the mortgage lender in Class 1 when mortgage arrears are owed on the claim. The Chapter 13 trustee shall raise this issue in confirmation proceedings.**

Section 1325(a) (5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a) (5) .

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b) (1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in

the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$8,139.74. Compare Claim No. 20 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date

because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B).

Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

Debtor Reply

On June 21, 2024, the debtor filed a reply to the trustee's opposition, ECF No. 195. The response offers to cure the mortgage arrears in Class 4 of the plan. The court has previously discussed why it will not confirm a plan with this provision. The motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

4. [23-24429](#)-A-13 **IN RE: AMELIA ALLEN**
[DPC-1](#)

MOTION TO DISMISS CASE
5-28-2024 [\[25\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Opposition Due: June 18, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$7,069.34 with one payment(s) of \$3,534.67 due prior to the hearing on this motion.

As a courtesy to the court the debtor filed a statement of non-opposition on June 12, 2024, ECF No. 29.

Accordingly, the court will grant the motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

5. [24-21030](#)-A-13 **IN RE: BINDU JOSEPH**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
4-18-2024 [\[22\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from May 21, 2024

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

6. [24-21030](#)-A-13 **IN RE: BINDU JOSEPH**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-16-2024 [\[18\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from May 21, 2024

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

7. [24-21730](#)-A-13 **IN RE: BILLY SPURGIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-12-2024 [\[52\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on June 25, 2024. Accordingly, this objection will be removed from the calendar as moot. No appearances are required.

8. [24-21730](#)-A-13 **IN RE: BILLY SPURGIN**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
6-13-2024 [\[61\]](#)

PETER MACALUSO/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

Final Ruling

This case was converted to Chapter 7 on June 25, 2024. Accordingly, this objection will be removed from the calendar as moot. No appearances are required.

9. [24-21730](#)-A-13 **IN RE: BILLY SPURGIN**
[RDW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GOLDEN 1 CREDIT UNION
6-13-2024 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

Final Ruling

This case was converted to Chapter 7 on June 25, 2024. Accordingly, this objection will be removed from the calendar as moot. No appearances are required.

10. [24-21033](#)-A-13 **IN RE: AUDREY/BARRY MASSON**
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
4-9-2024 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from May 21, 2024

Disposition: Resolved by stipulation

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

The parties have resolved the matter by stipulation. A proposed order confirming the plan has been submitted as an exhibit, Exhibit A, ECF No. 27. The proposed order has been signed by the objecting creditor and counsel for the Chapter 13 trustee.

Accordingly, the court removes this matter from the calendar. The debtor shall submit the order confirming the plan, which has been approved by the opposing party and the Chapter 13 trustee.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is resolved by stipulation. The debtor shall submit an order confirming the plan which is consistent with this ruling.

11. [23-24434](#)-A-13 **IN RE: RYAN/ITATI MARTIN**
[TLA-1](#)

MOTION TO MODIFY PLAN
5-23-2024 [\[21\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 64 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

The court will deny confirmation of the debtor's plan.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the

trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.").” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff’d*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,983.00. The trustee reports that another plan payment of \$2,983.00 is due on June 25, 2024. He also reports that the last payment received from the debtor was April 11, 2024. The motion will not be granted if the plan payments are not current, as this is evidences that the plan is not feasible under 11 U.S.C. § 1325(a) (6).

Classification of Secured Mortgage Claim Unclear

The following provision is contained in the order confirming the currently confirmed Chapter 13 Plan:

ServiceMac, LLC is the servicer of the Debtors' mortgage. ServiceMac will be filing a Proof of Claim which states that the Debtors have a pre-petition arrearage relating to their escrow account and/or a projected escrow shortage. Any escrow shortage (projected or actual) will be paid via the Debtors ongoing class 4 mortgage payment.

Order Confirming Plan, 2:3-6, ECF No. 18.

The proposed modified plan fails to include this language in the Non-Standard provisions. The mortgage lender, ServiceMac, LLC, is provided for in the proposed modified plan in Class 4. However, as the creditor has filed a claim which includes pre-petition mortgage arrears in the amount of \$2,456.47, this classification is incorrect absent the inclusion of the provision contained in the previous order confirming the plan.

As such, the secured creditor has not received sufficient notice regarding the treatment of it's claim and the payment of the arrears. Accordingly, the court will deny the motion and allow the debtor to file a further modified plan.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

12. [24-20935](#)-A-13 **IN RE: SIANG PETERS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-16-2024 [\[31\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from May 21, 2024
Disposition: Sustained and confirmation denied
Order: Civil minute order

Attorney Mark Shmorgan is ordered to appear at the hearing on the motion on July 2, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, *or with any order of the Court* may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On May 23, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 4, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 4, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 18, 2024. The evidentiary record will close after June 18, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 4, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 49, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by June 4, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and substantial additional work for the court in this matter. Counsel for the debtor shall be prepared to explain the failure to respond to the order.

CONFIRMATION

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

The Chapter 13 trustee contends the plan is not feasible. The trustee points to the significant plan payment, \$12,000 per month, and the irregularity in income of the debtor's non-filing spouse who is self-employed. The court has previously discussed the inconsistency of the evidence regarding the non-filing spouse's income in the objection raised by creditor Ajax Mortgage (EAT-1)

The trustee also states:

This is the Debtor's 4th bankruptcy filing since 2017 (previous case #'s: 17-26561, 22-20081, 24-20196). The Debtor's 2017 case was dismissed after confirmation for delinquency where she stated in her reply that they fell behind in payments due to their inconsistent

income. The 2022 and 2024 cases were both filed and dismissed by the court for failure to timely file documents.

Objection, 2:19-25, ECF No. 31.

The debtor was given ample opportunity to file evidence refuting the trustee's contention that the plan is not feasible, and the debtor has failed to file any evidence in rebuttal. Accordingly, the court finds that the record does not support the feasibility of the proposed plan and will sustain the objection to confirmation.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

13. [24-20935](#)-A-13 **IN RE: SIANG PETERS**
[EAT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE
LOAN TRUST 2022-A, MORTGAGE-BACKED SECURITIES, SERIES 2022-A
4-4-2024 [\[24\]](#)

MARK SHMORGON/ATTY. FOR DBT.
EDWARD TREDER/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from May 21, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Mark Shmorgan is ordered to appear at the hearing on the motion on July 2, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either:

1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, *or with any order of the Court* may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On May 23, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 4, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than June 4, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 14, 2024. The evidentiary record will close after June 14, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than June 4, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

IT IS FURTHER ORDERED that if the parties resolve this objection by stipulation, then the Chapter 13 trustee shall be a party to the stipulation.

Order, ECF No. 50, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by June 4, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and substantial additional work for the court in this matter. Counsel for the debtor shall be prepared to explain the failure to respond to the order.

CONFIRMATION

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Ajax Mortgage Loan Trust objects to confirmation of the plan contending that the plan is not feasible under 11 U.S.C. § 1325(a).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the

trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

The objecting creditor contends that the debtor has failed to prove the plan is feasible because the information provided in the schedules and Statement of Financial Affairs does not support the plan payment of \$12,000 per month.

On March 8, 2024, Debtor filed Schedule I (Dkt. #1) which reflects Debtor's combined monthly income is \$14,421.93 consisting of *Debtor's net income from operating a business in the amount of \$13,133.92* and \$1,288.01 from her husband's business. Attached to Schedule I are two Attachments labeled #1 and #2. Attachment #1 lists *Debtor's 2023 total net income in the amount of \$15,456.10, which is an average of \$1,288 per month (\$15,456.10 divided by 12 = \$1,288), an amount substantially less than \$13,133.92 or the proposed monthly plan payment of \$12,000.* Attachment #1 provides no information regarding Debtor's 2024 net income. Attachment #2 lists Debtor's gross income for 2023 and 2024. Attachment #2 reflects Debtor's gross income for January 1, 2024, through March 8, 2024, in the total amount of \$18,422.86, *which is an average of \$7,991.88 per month, an amount substantially less than \$13,133.92 or the proposed monthly plan payment of \$12,000.* Debtor's monthly net business income in the amount of \$13,133.92 which is necessary to fund Debtor's plan appears speculative. Because Debtor's monthly income from operating a business in the amount of \$13,133.92 appears speculative, Debtor's plan does not appear feasible.

Objection, 2:19-26, 3:1-6, ECF No. 24, (emphasis added).

The court agrees with the objecting creditor. Absent any additional evidence from the debtor the schedules and statements filed in this case do not support the debtor's ability to fund the \$12,000 per month plan payment. The court notes that the debtor filed an amended Schedule I on April 4, 2024, ECF No. 27. However, the figures cited in the objection appear to be the same. The debtor has failed to indicate in the amended schedule what, if any, changes were made to any of the evidence proffered.

The court will sustain the objection.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

14. [24-20935](#)-A-13 **IN RE: SIANG PETERS**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK
NATIONAL TRUST COMPANY
3-25-2024 [\[17\]](#)

MARK SHMORGON/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from May 21, 2024

Disposition: Overruled; confirmation denied

Order: Civil minute order

Attorneys Mark Shmorgan and Kirsten Martinez are ordered to appear at the hearing on the motion on July 2, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, *or with any order of the Court* may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary

sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On May 23, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 4, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than June 4, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 14, 2024. The evidentiary record will close after June 14, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than June 4, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

IT IS FURTHER ORDERED that if the parties resolve this objection by stipulation, then the Chapter 13 trustee shall be a party to the stipulation.

Order, ECF No. 51, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by June 4, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the creditor's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and substantial additional work for the court in this matter. Counsel for the debtor shall be prepared to explain the failure to respond to the order.

Neither did the objecting creditor advise the court that this objection was resolved. As the court has discussed below in this ruling, the matter appears to have been resolved by the amendment of the creditor's claim on June 4, 2024. Counsel for the objecting creditor shall be prepared to explain why she did not file a reply advising the court that this matter had been resolved when the claim was amended.

CONFIRMATION

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Deutsche Bank National Trust Company objects to confirmation of the debtor's plan contending: (1) the plan provided for an incorrect amount in Class 2; and (2) that the plan was not feasible given the increased amount stated in the claim.

The debtor filed an objection to the creditor's claim. Yet the debtor failed to file anything with the court which would inform the court of this development. The amount of the creditor's claim appears to have been resolved by the creditor who amended its claim in an amount which also appears to resolve the feasibility argument raised by the creditor.

The parties shall be prepared to address these issues at the hearing on this objection. Counsel for the debtor shall be prepared to inform the court why no statement was filed that alerted the court to the pending claim objection.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled. Confirmation is denied as additional objections to confirmation have been raised and sustained.

15. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLEN**
[MET-2](#)

CONTINUED MOTION TO CONFIRM PLAN
3-26-2024 [\[44\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee and creditor

Disposition: Continued to August 13, 2024, at 9:00 a.m.

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee and creditor Erika Ceja oppose the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The hearing on this motion was continued to allow creditor Erika Ceja to augment the evidentiary record and for the debtor to file a response. The court notes that the Chapter 13 trustee has filed opposition contending the plan payments are delinquent.

REQUEST FOR CONTINUED HEARING

On June 18, 2024, counsel for the debtor filed a timely request to continue the hearing on this matter for the following reasons: (1) voluminous documents were filed in opposition to the motion by creditor Ceja which require analysis and response from the debtor; and (2) the debtor has been ill and was hospitalized twice in June 2024 which prevented counsel from meeting with the debtor and responding to the evidence filed. While now at home the debtor has not been medically cleared to meet with her attorney until July 1, 2024. Debtor Response, ECF No. 89.

The court will grant the debtor's request for additional time to respond to the evidence which has been filed and will also continue the hearing on this matter. Fed. R. Bankr. P. 9006(b).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the hearing on the motion is continued to August 13, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than July 30, 2024, the debtor shall file and serve all evidence and argument in response to the opposition and evidence filed by creditor Ceja and the Chapter 13 trustee in this matter. The evidentiary record will close on July 30, 2024, and no further evidence may be filed regarding this motion without further order of the court.

IT IS FURTHER ORDERED that no later than July 30, 2024, the Chapter 13 trustee shall file a status report apprising the court regarding the status of payments under the proposed Chapter 13 Plan.

16. [21-23339](#)-A-13 **IN RE: RANJANI PRASAD**
[DPC-2](#)

MOTION TO DISMISS CASE
5-31-2024 [\[25\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Opposition Due: June 18, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,450.00 with one payment(s) of \$350.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

17. [24-21539](#)-A-13 **IN RE: EMILIO FLORES AND AZUCENA CRUZ**
[MB-1](#)

MOTION FOR COMPENSATION FOR MICHAEL BENAVIDES, DEBTORS
ATTORNEY(S)
5-24-2024 [\[30\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
DEBTORS DISMISSED: 05/14/24; TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); non-opposition filed by the trustee

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$500.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Michael Benavides has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$500.00 and reimbursement of expenses in the amount of \$0.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Michael Benavides's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$500.00 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$500.00. As of the date of the application, the applicant has been paid \$500.00.

18. [24-21241](#)-A-13 **IN RE: JAMES/LISA GENTRY**
[MJD-1](#)

MOTION TO CONFIRM PLAN
5-22-2024 [\[26\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$8,356.00 with one additional payment of \$4,178.00 due prior to the hearing in this motion. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

19. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
5-13-2024 [\[65\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case
Notice: Continued from June 18, 2024
Disposition: Denied
Order: Civil minute order

The hearing on this motion was continued to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (MS-2) has been granted.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

20. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[MS-2](#)

MOTION TO MODIFY PLAN
5-27-2024 [\[77\]](#)

MARK SHMORGON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed May 27, 2024

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor(s) seek approval of the proposed First Modified Chapter 13 Plan, ECF No. 81. The plan is supported by Schedules I and J filed on May 27, 2024, ECF No. 72. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 84. The Chapter 13 requests that the order confirming the modified plan correct a minor typographical error. The order shall state "the total paid into the plan through May 2024, (month 6) is \$1,854.00, then \$400.00 per month for the remaining 54 months of the plan."

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards

as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The debtor shall submit an order consistent with the court's ruling which has been signed by the Chapter 13 trustee. The court will grant the motion and approve the modification.

21. [24-20964](#)-A-13 **IN RE: FRANK BELL**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
4-22-2024 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from May 21, 2024

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

22. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
4-17-2024 [\[58\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The hearing on the trustee's motion to dismiss will be continued to August 13, 2024, at 9:00 a.m. to coincide with the debtor's motion to modify plan. Not later than 14 days prior to the hearing on this motion the Chapter 13 trustee shall file a status report which appraises the court regarding the motion to dismiss. The status report shall include the status of plan payments under the proposed modified plan.

23. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[TLA-2](#)

MOTION TO MODIFY PLAN
5-7-2024 [\[65\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Continued to August 13, 2024, at 9:00 a.m.

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

CONFIRMATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Trustee Opposition

The Chapter 13 trustee opposes the motion because the debtor has failed to provide for post-petition mortgage arrears: (1) in the amount of \$2,613.14 to Class 1 creditor, Rushmore Servicing; and (2) in the amount of \$645.58 to Class 1 creditor PNC Bank. Absent these provisions the trustee is unable to make distributions to these creditors curing the post-petition mortgage delinquencies.

Debtor Reply

The debtor has filed a reply to the trustee's opposition. The debtor contends that the plan payments will allow for payment to the creditors and seeks permission to add the appropriate amount of arrears to the order granting the modified plan. The proposed plan calls for a 50% distribution to unsecured creditors.

The difficulty is that the plan provides no notice to the secured creditors of the proposed treatment under the plan and amount of post-petition mortgage arrears. Absent a written stipulation from each of the impacted Class 1 creditors the court will deny the motion.

Continued Hearing

The court will continue the hearing on this matter to allow the debtor to obtain the necessary signatures agreeing to the proposed treatment of each obligation in a proposed order. The proposed order must also contain the signature of the Chapter 13 trustee. The trustee's signature on a proposed order represents to the court that the plan is feasible and calculated to pay all creditors as proposed, including unsecured creditors at 50%.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to August 13, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than July 30, 2024, the debtors shall file either: (1) a proposed order confirming the modified plan which has been signed by the Chapter 13 trustee, and counsel for Rushmore Servicing, and PNC Bank; or (2) a statement that the debtors have been unable to acquire a stipulation in this matter. Further evidence or argument in support of, or opposition to, this motion is not allowed absent an order from this court.

24. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[DPC-3](#)

MOTION TO DISMISS CASE
6-3-2024 [\[78\]](#)

GEOFF WIGGS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by debtors

Disposition: Continued to July 16, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: June 18, 2024

Opposition Filed: June 18, 2024 - timely

Motion to Modify Plan Filed: June 10, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 16, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

25. [23-23672](#)-A-13 **IN RE: NAWAL BSHARAH**
[DPC-2](#)

MOTION TO DISMISS CASE
6-3-2024 [\[82\]](#)

CLAY PRESLEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Opposition Due: June 18, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to file an amended Chapter 13 Plan following the court's denial of confirmation of the most recently filed plan.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because the debtor has failed to file an amended plan. The court hereby dismisses this case.

26. [24-20873](#)-A-13 **IN RE: RICHARD/CYNTHIA SOUTSOS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-16-2024 [\[12\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from May 21, 2024

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

27. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2024 [\[36\]](#)

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

28. [23-21277](#)-A-13 **IN RE: OLIVER/FERLYN YLAGAN**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
6-3-2024 [\[28\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
NOTICE OF WITHDRAWAL, ECF NO. 29

Final Ruling

As the Transfer of Claim was withdrawn on June 4, 2024, ECF No. 29, the order to show cause is discharged.

29. [23-21777](#)-A-13 **IN RE: KEITH/LESLIE MCCOMBS**
[SLH-1](#)

MOTION TO MODIFY PLAN
5-28-2024 [\[33\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself,

coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on May 31, 2023, approximately 13 months ago, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The updated schedules are part of the debtor's prima facie case for plan modification and must be filed at the outset of the motion, and not in response to opposition by the trustee or a creditor.

DEBTOR REPLY

On June 25, 2024, in response to the trustee's opposition the debtor filed an additional declaration and supplemental Schedules I and J. The debtor's declaration explains the numerous changes to the schedules. As the court has previously discussed in this ruling, the supplemental schedules are part of the debtor's prima facie case for plan modification and must be filed at the outset of the motion and not in response to the trustee's opposition. This allows the trustee, creditors, and the court, to evaluate the motion in context at the outset. Additionally, it allows sufficient time for the opposing parties and the court to evaluate the changes proposed in the debtor's budget. The court will deny the motion.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

30. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[DPC-2](#)

MOTION TO DISMISS CASE
6-3-2024 [\[47\]](#)

KEVIN TANG/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor

Disposition: Granted

Order: Civil minute order

Opposition Due: June 18, 2024

Amended Plan Filed: June 7, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$2,298.36, with one payment(s) of \$2,298.36 due prior to the hearing on this motion. The trustee also seeks dismissal as the debtor has failed to file an amended plan after the court denied confirmation of the previously filed plan.

The debtor has filed an amended plan as opposition to the motion. The debtor also filed a motion to confirm the amended plan. However, the plan was set for hearing on an incorrect date.

On June 11, 2024, the clerk contacted debtor's counsel regarding the incorrect date however, counsel has not yet filed and served an amended notice of hearing on all interested parties as required. Memo to File re Calendar Correction, ECF No. 60. As such the plan which the debtor filed in opposition to this motion is not set for hearing.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. While the debtor has filed an amended plan it must also be set for a confirmation hearing. A confirmation hearing has not yet been set. The court is unable to deny the motion given the outstanding delinquency and the debtor's failure to set the amended plan for hearing.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

31. [24-20980](#)-A-13 **IN RE: FRANK CASTRO**
[MEV-1](#)

MOTION TO CONFIRM PLAN
5-16-2024 [\[26\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$416.00 with one additional payment of \$416.00 due on June

25, 2024. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

32. [24-20883](#)-A-13 **IN RE: DARON/CHANTEL YOUNG**
[SKI-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY HYUNDAI
CAPITAL AMERICA
4-18-2024 [\[25\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from May 21, 2024

Disposition: Overruled as moot

Order: Civil minute order

Attorney Michael Benavides is ordered to appear at the hearing on the motion on July 2, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including,

without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On May 23, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that *the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 4, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than June 4, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 14, 2024. The evidentiary record will close after June 14, 2024; or

(C) *File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than June 4, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and*

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

IT IS FURTHER ORDERED that if the parties resolve this objection by stipulation, then the Chapter 13 trustee shall be a party to the stipulation. The trustee's signature on a stipulation signifies that the plan

will fund as originally proposed, despite any changes in interest paid to the objecting creditor.

Order, ECF No. 41, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by June 4, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the creditor's timely compliance to file a reply. The debtor's failure to respond timely as ordered has caused inconvenience and created substantial additional work for the court in this matter. Counsel for the debtor shall be prepared to explain his failure to timely respond to the order.

CONFIRMATION

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

Motion to Confirm, Value Collateral

On June 24, 2024, the debtor filed an amended plan, a motion to confirm the amended plan, and a motion to value collateral. The documents were filed 20 days after the date required by the court's previous order. No documents have been filed explaining the reason(s) for the tardiness of the debtors' response in this matter. No request to file the documents late was made as required under Fed. R. Bankr. P. 9006(b). The court will hear the matter.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

33. [23-24087](#)-A-13 **IN RE: KERRY LUCY**
[DPC-3](#)

MOTION TO DISMISS CASE
6-3-2024 [\[36\]](#)

SETH HANSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor

Disposition: Granted

Order: Civil minute order

Opposition Due: June 18, 2024

Opposition Filed: June 18, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$400.00, with one payment(s) of \$400.00 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 43, 44. The declaration states that the debtor has made one plan payment of \$400 via TFS and will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 44. The court notes that an amended plan and amended Schedules I and J were also filed on June 14, 2024. The opposition indicates that the motion to confirm the amended plan will be filed before the date of the hearing on this motion.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

34. [23-24687](#)-A-13 **IN RE: RAFAEL CHAVEZ AND YAQUELIN REYES**
[KMM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-22-2024 [\[30\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied as moot

Order: Civil minute order

Subject: 2023 Toyota BZ4X

Plan Classification: Class 4

Plan Confirmed: December 31, 2023

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of

standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. §1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Toyota Motor Credit Corporation's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

35. [24-20987](#)-A-13 **IN RE: KYLE/GRACIELA FARRIS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-15-2024 [\[14\]](#)

SETH HANSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from May 21, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Seth Hanson is ordered to appear at the hearing on the motion on July 2, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from May 21, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, *or with any order of the Court* may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On May 23, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that *the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 4, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the

applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 4, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 18, 2024. The evidentiary record will close after June 18, 2024;

or (C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 4, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 20, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by June 4, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and significant additional work for the court in this matter. Counsel for the debtor shall be prepared to explain the failure to respond to the order.

CONFIRMATION

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion or motion to avoid lien] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Flagship Credit Acceptance's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

The court will sustain the trustee's objection and deny confirmation of the plan as no motion to value collateral has been filed. Accordingly, the court need not reach the remaining issues raised by the Chapter 13 trustee in his objection.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

36. [24-21088](#)-A-13 **IN RE: JEANNA TOWNER**
[CCR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-7-2024 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.
VERITAS CAPITAL LLC, VS.

Tentative Ruling

Motion: Stay Relief

Notice: Continued from June 4, 2024

Disposition: Granted

Order: Civil minute order

Subject: 4015 William Way, Camino, California

The hearing on this motion was continued to allow the parties to brief the legal issues raised in the motion. Each of the parties has submitted supplemental argument.

Veritas Capital, LLC seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a), contending that cause exists as the debtor's interest in the subject property has been extinguished because of the pre-petition foreclosure sale.

The debtor opposes the motion contending that the foreclosure on the property was not completed prior to the petition date, and therefore she maintains her interest in the subject property.

FACTS

A trustee's sale of the subject property was held on March 19, 2024, at 10:45 a.m. Debtor filed her bankruptcy petition later that same day at 5:21 p.m. The movant was the winning bidder at the foreclosure sale and was not a prospective owner-occupant as defined under Cal. Civ. Code § 2924m(a)(1).

The foreclosure trustee, Quality Loan Service Corporation ("Quality"), complied with the provisions of California Civil Code §§ 2924m(e)(1), (2) by timely posting the pertinent trustee's sale information on its website within 48 hours of the sale and by making the same information available by telephone. Declaration of Bounlet Louvan, Para. 6, ECF No. 36.

No Notice of Intent to Bid was received by Quality by 5:00 p.m. on April 3, 2024, which was 15 days after the date of the trustee's sale. *Id.* Accordingly, a Trustee's Deed Upon Sale was issued by Quality on April 4, 2024, and was recorded on April 5, 2024, which was 17 days after the sale. Declaration of Jake Oliver, Para. 4, ECF No. 35.

The debtor's proposed plan provides for payment of the arrears owed on the subject property in Class 1, as though the foreclosure sale

did not occur. Chapter 13 Plan, Section 3.07, ECF No. 14. The subject property is the debtor's residence. Petition, ECF No. 1.

AUTOMATIC STAY

A bankruptcy petition operates as a stay applicable to all parties and prevents, among other things, any act to obtain possession of property of the estate. 11 U.S.C. § 362(a)(3). *The stay does not apply to any act to perfect an interest in property to the extent that the trustee's rights are subject to perfection under 11 U.S.C. § 546(b).* That section permits an entity who acquires rights to property pre-petition to perfect its interest in property post-petition. *In re Stork*, 212 B.R. 970, 971 (Bankr. N.D. Cal. 1997).

In re Hager, 651 B.R. 873, 879-80 (Bankr. E.D. Cal. 2023) (emphasis added).

RIGHTS OF PARTIES IN SUBJECT PROPERTY

Rights Determined Under State Law

The property rights of the parties, and whether those rights are obtained pre-petition or post-petition, are determined under state law. *Butner v. United States*, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). We must "look to state law to determine property interests of the debtor." *Eden Place LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1127 (9th Cir. 2016).

California Foreclosure Law

The general rule regarding the finality of a foreclosure sale is found in the California Civil Code:

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 21 calendar days after the sale, or the next business day following the 21st day if the county recorder in which the property is located is closed on the 21st day. If an eligible bidder submits a written notice of intent to bid pursuant to paragraph (3) of subdivision (c) of Section 2924m, the trustee's sale shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 60 calendar days after the sale or the next business day following the 60th day if the county recorder in which the property is located is closed on the 60th day.

...

Cal. Civ. Code § 2924h(c).

California amended its foreclosure laws in 2020. Because the property is a single dwelling unit (this does not appear to be disputed by the parties) the provisions of Cal. Civil Code § 2924c were applicable in conducting the foreclosure sale.

(c) A trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to four residential units pursuant to Section 2924g *shall not be deemed final until the earliest of the following:*

(1) If a prospective owner-occupant is the last and highest bidder at the trustee's sale, the date upon which the conditions set forth in Section 2924h for the sale to become final are met. The prospective owner-occupant shall submit to the trustee the affidavit or declaration described in paragraph (1) of subdivision (a) at the trustee's sale or to the trustee by 5 p.m. on the next business day following the trustee's sale.

(2) *Fifteen days after the trustee's sale unless at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid.*

. . .

Cal. Civ. Code § 2924m(c) (1), (2) (emphasis added).

In this case the movant was not a prospective owner-occupant. Therefore, the provisions of CC § 2924m(c) (2) were applicable.

If the prevailing bidder is not a prospective owner-occupant, then a 15-day window opens after the sale. While the window is open, eligible third parties may submit bids or notices of intent to bid, and the sale will not be deemed final until the earliest of one of the conditions specified in CC § 2924m(c) (1) through (c) (4) are satisfied.

Hager, id., at 882.

In this case no bids or notices of bids were received. This fact distinguishes the instant case from those presented in *Hager*.

If no bids or notices of intent to bid are received by the foreclosing trustee by the 15th day, then the window closes. The sale is final on the 15th day after the foreclosure sale. CC § 2924m(c) (2). *If the trustee's deed is recorded by the 21st day after the sale, then the sale will be deemed final and perfected as of 8:00 a.m. on the date of the sale. CC § 2924h(c).*

Id., at 882 (emphasis added).

Under California Civil Code § 2924h(c), if the Trustee's Deed Upon Sale is recorded within 21 days of the trustee's sale, the sale is deemed perfected as of 8:00 a.m. on the actual day of the sale, which in this case was March 19, 2024. As such, the debtor's equitable ownership interest has been extinguished.

Meanwhile, the point in time in which a sale is "deemed perfected" is controlled by CC § 2924h(c). The difference is that the 60-day relation back period for having a sale both "deemed final" and "deemed perfected" is *only applicable if notices of intent to bid are received from eligible tenant buyers for properties with 1-4 residential units. In all other cases, the finality and perfection of a sale will occur under § 2924h(c) if the deed is recorded within 21 days.*

Hager, id. at 884 (emphasis added).

The court concludes that the debtor has no ownership interest in the subject property.

STAY RELIEF

Cause

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted.

The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Veritas Capital, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 4015 William Way, Camino, California, as to all

parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

37. [24-21689](#)-A-13 **IN RE: ANNETTE MATTHEWS**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
6-11-2024 [[24](#)]

CHERYL SKIGIN/ATTY. FOR MV.

Final Ruling

This case was dismissed on June 20, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

38. [24-21689](#)-A-13 **IN RE: ANNETTE MATTHEWS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-11-2024 [[28](#)]

Final Ruling

This case was dismissed on June 20, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

39. [24-21689](#)-A-13 **IN RE: ANNETTE MATTHEWS**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
5-22-2024 [[19](#)]

SEAN FERRY/ATTY. FOR MV.

Final Ruling

This case was dismissed on June 20, 2024. Accordingly, the
objection will be removed from the calendar as moot. No appearances
are required.